

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA 4:24-CR-298-1

VS. HOUSTON, TEXAS

EITHAN DAVID HAIM DECEMBER 3, 2024

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
HEARD BEFORE THE HONORABLE DAVID HITTNER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 P R O C E E D I N G S

2 THE LAW CLERK: All rise.

3 THE COURT: Thank you. Be seated, please.

4 The Court calls the Case Criminal Matter 24-298,

02:03PM 5 *United States of America versus Eithan David Haim.*

6 Who represents the government?

7 MS. FEINSTEIN: Jessica Feinstein, Tyler White and
8 Loretta Bahry for the government. Good afternoon.

9 THE COURT: Hang on.

02:03PM 10 MS. FEINSTEIN: Of course.

11 THE COURT: Feinstein.

12 MS. FEINSTEIN: And Tyler White.

13 THE COURT: White.

14 MS. FEINSTEIN: And Loretta Bahry.

02:04PM 15 THE COURT: All right. And for the defense?

16 MR. PATRICK: Ryan Patrick.

17 THE COURT: Okay. Hang on.

18 MR. PATRICK: Jeff Hall; Marcella Burke; Mark Lytle,
19 L-Y-T-L-E; and Dr. Haim.

02:04PM 20 THE COURT: Okay. We have a new attorney here,
21 Mr. Burke. What's his --

22 MR. PATRICK: Marcella Burke? She's been --

23 THE COURT: No, no, not -- I'm sorry.

24 MR. PATRICK: Mr. Lytle?

02:04PM 25 THE COURT: I'm sorry. Mr. Lytle, yes, sir. There you

1 are.

2 MR. PATRICK: This is his first time ever to fly in for
3 a hearing, but he's been on all of our pleadings. He's filed
4 an appearance. He's admitted to the district.

02:04PM

5 THE COURT: Got it. All right. I just have some
6 initial matters before we get underway. This is just as far as
7 some other matters that are pending. You're probably wondering
8 where they are. And, again, I have this written down and just
9 to cover it all.

02:05PM

10 We're here today basically on a motion hearing to
11 discuss the government's motion for the issuance of a gag
12 order. I understand that there are other pending motions
13 pertaining to separate aspects of this case. I understand, and
14 I've gone through them. On a couple, we're waiting for
15 responses from the government.

02:05PM

16 But as to all of those motions, I'm not ignoring
17 them. I don't anticipate holding a hearing to determine the
18 outcome of those motions; and, instead, I'm going to be
19 considering them on the pleadings in the near future, which in
20 the next week or so I'll get them out. I'm not ignoring them.
21 We're waiting on a couple of responses. No rush. But when
22 they're all in, I'll look at them and get them all out at one
23 basic time.

02:05PM

24 All right. At this time, we're here today on the
25 government's motion. So if the government -- you want to lead

02:06PM

1 off and then we'll hear from the defense after they're through.

2 Keep in mind that any exhibits that are entered
3 are going to be entered even if there's an objection but for
4 the purposes of this hearing only. It doesn't relate to the
02:06PM 5 admission of anything in front of a jury. So it's a whole
6 different ball game when you're dealing with a nonjury matter
7 or a bench matter versus when the jury is in the box. And I
8 understand that, just like the difference between a preliminary
9 injunction and a trial on the merits. So a judge can consider
02:06PM 10 things that perhaps the jury under the rules of evidence
11 cannot.

12 With that, okay, Ms. Feinstein. You want to lead
13 off? You've got a microphone. Pull it in to you. Get the
14 base and pull it in to you, and it will carry.

02:07PM 15 MS. FEINSTEIN: Can you hear me?

16 THE COURT: Yes. And you don't have to lean over to be
17 uncomfortable.

18 MS. FEINSTEIN: Thank you.

19 THE COURT: Unless you're uncomfortable anyhow.

02:07PM 20 MS. FEINSTEIN: You know, as much as I love these
21 hearings.

22 THE COURT: Yes.

23 MS. FEINSTEIN: Your Honor, we're here to ask for a
24 limited, narrowly-drawn gag order on the defendant and the
02:07PM 25 defense team, his attorneys. As we said in our motions, in our

1 initial motion and in our recent reply, this is not a total bar
2 on speech for the defendant. It's intended to be limited to
3 certain things. And I want to give some examples to the Court
4 on Trial Director of prior speech that the defendant has been
02:07PM 5 making in this case of the --

6 THE COURT: Now, keep in mind if there's anything up on
7 appeal later on, that's all they're going to be able to
8 consider, even though the admission is limited for the purposes
9 of this hearing only. So if you're going to offer these
02:08PM 10 things, at least you need to offer it for the purposes of this
11 hearing to be in the packet if and when it ever goes up.

12 MS. FEINSTEIN: Yes, Your Honor. And for the record,
13 we put in Exhibit A and Exhibit B to our initial filing.

14 THE COURT: All right. Hang on a second.

02:08PM 15 MS. FEINSTEIN: Yes, of course.

16 THE COURT: Because in your initial filings, you had 13
17 attachments. That's correct. I'm looking at when you went
18 through as to all the interviews. You're aware what I'm
19 referring to?

02:08PM 20 MS. FEINSTEIN: I'm actually not, Your Honor. I'm
21 sorry. I'm referring to the government's motion for a gag
22 order.

23 THE COURT: All right. Go on.

24 MS. FEINSTEIN: So that's Docket Number 105.

02:09PM 25 THE COURT: Hang on. I'm looking it up.

1 Well, I'm looking at this. For instance,
2 government's motion for gag order, Exhibit 108, another one on
3 108. 107, 107, 107.

4 MS. FEINSTEIN: Yes.

02:09PM

5 THE COURT: Is that what you're referring to?

6 MS. FEINSTEIN: Exactly. So docket number -- and hold
7 on a minute. I can tell the Court exactly.

8 THE COURT: I gotcha. I had different footnotes, but
9 okay. You're dealing --

02:09PM

10 MS. FEINSTEIN: Yeah.

11 THE COURT: 107 and 108?

12 MS. FEINSTEIN: 107 and 108, those are Exhibits A and
13 B. They're now unsealed. They contain multiple different
14 postings on X.

02:09PM

15 In addition, in our reply we have Exhibits C and
16 D we've submitted to the Court; and I'm going to be walking
17 through those. There are a small handful of other things I
18 might cover today and show the Court; and we will, I guess,
19 propose those be marked as exhibits and entered into the record
20 when we get to them.

02:09PM

21 Before I do that, before I walk the Court through
22 the tweets and whatnot, I'd like to just make a few arguments
23 for the Court, if I may.

24 THE COURT: Sure.

02:10PM

25 MS. FEINSTEIN: Okay. So, you know, we want to focus

1 on prejudicial and inflammatory speech. That's what we're
2 talking about here. And our main concern here is avoiding
3 contamination to the jury. We are not concerned about avoiding
4 criticism. That's been a big thing the defendant has been
02:10PM 5 arguing in his response to us. We've been getting criticism on
6 this case from the defendant and others from the get-go.

7 THE COURT: Including the lawyers at least one time.

8 MS. FEINSTEIN: Yes. And we've been content to focus
9 on our job and to put our noses down. That's what we prefer to
02:10PM 10 be doing, frankly. But as we get closer to trial -- and I do
11 anticipate -- I know there's no current trial date, but I do --

12 THE COURT: You'll get one today.

13 MS. FEINSTEIN: I anticipate there will be one soon.

14 You know, as a number of such statements by the
02:10PM 15 defendant and his counsel have piled up and increased, as the
16 defendant's profile has increased, as the interest in the case
17 has increased, we believe that a line has now been crossed; and
18 we're now in danger of real substantial likelihood of tainting
19 the jury in this case.

02:11PM 20 And I want to emphasize for the Court there's a
21 lot of speech that the defendant has made that we don't find
22 objectionable, that we're not trying to bar; and indeed, in
23 certain tweets there are things he will say that are fine.

24 THE COURT: You can slow down.

02:11PM 25 MS. FEINSTEIN: I'm sorry.

1 THE COURT: We've got plenty of time. Go on.

2 MS. FEINSTEIN: In certain postings that the defendant
3 has made online, there are certain things that the defendant
4 has said that are fine, we have no objection to. He is
02:11PM 5 absolutely free to make whatever statements he wants, for
6 example, on the issue of transgender care and transgender care
7 for minors. We're not seeking to stop any of that.

8 And, in fact, I also think any one of these
9 statements by themselves would not be a reason to seek a gag
02:11PM 10 order. It's the volume, Your Honor. It's the fact that
11 they're living on the Internet; and all it would require to
12 taint the jury pool is for a single juror to look on his phone
13 and look up the defendant, which is a very tempting thing to do
14 no matter what admonition the Court gives, for the jury to be
02:12PM 15 potentially tainted.

16 THE COURT: Have you kept down of the number of
17 downloads, the various presentations that the defendant and/or
18 the attorneys have made that -- potential downloads by these
19 various individuals who are hosting some of these blogs or
02:12PM 20 whatever you call them?

21 MS. FEINSTEIN: Sure. It's impossible to quantify.
22 There's been so many, Your Honor. What you can see on the
23 individual posts -- and I'll point out a few of them -- is the
24 number of times that they've been viewed by people, for
02:12PM 25 example, on X.

1 THE COURT: I'm sorry. That's what I meant.

2 MS. FEINSTEIN: Yes.

3 THE COURT: That's what I meant.

4 MS. FEINSTEIN: That's okay.

02:12PM

5 And I'm going to show a couple of examples of
6 news articles where -- and what happens with any one of these
7 posts is that it's not just the defendant's viewers. It's
8 anyone who then reposts it, including high-profile people; and
9 it's also members of the press who then quote directly from
10 Twitter.

02:13PM

11 We're not trying to gag the press. The press is
12 able to go and look at all of the public proceedings here and
13 have their own commentary, but the point is it's the
14 defendant's speaking that is getting basically elevated in all
15 of these news articles and the likes.

02:13PM

16 THE COURT: Has it, you think, increased in intensity
17 from your point of view?

18 MS. FEINSTEIN: I do think so, and that's unscientific,
19 Your Honor, but just based on what I've reviewed.

02:13PM

20 All right. So I think with that, Your Honor, I'm
21 just going to go ahead and start showing some examples of --
22 and these are just examples, Your Honor, and I'm not going to
23 go through everything as I think we'd be here for too long.

02:13PM

24 THE COURT: Well, I'm just saying if another entity has
25 to look at it, they have to have it identified and included.

1 MS. FEINSTEIN: In the record, you mean?

2 THE COURT: That's correct.

3 MS. FEINSTEIN: Yes.

4 THE COURT: Not the jury.

5 MS. FEINSTEIN: Yes.

6 THE COURT: We're not there at all, if these are at all
7 admissible for the jury. It's for this unique motion that's
8 been filed.

9 MS. FEINSTEIN: Your Honor, we will cite to the exhibit
02:14PM 10 and we will give the date of the Tweet and everything like
11 that.

12 THE COURT: Okay.

13 MS. FEINSTEIN: Okay.

14 All right. So I think the first thing I'd like
02:14PM 15 to do, and Ms. Cardona is going to help me out with this,
16 there's -- it's a short video clip, Your Honor. It was cited
17 in our reply brief. So it's not marked as an exhibit, but it's
18 cited in a footnote to our reply brief.

19 THE COURT: What exhibit is it? Does it have an
02:14PM 20 exhibit number?

21 MS. FEINSTEIN: It doesn't have an exhibit number. If
22 the Court would like, after this, we can submit it separately
23 as an exhibit.

24 THE COURT: Well, for the purposes of this hearing,
02:14PM 25 probably we ought to.

1 MS. FEINSTEIN: Okay.

2 THE COURT: Okay? But you need to bring that to my
3 attention or at least get it on the record, but for whatever
4 reason, identify it and run it.

02:14PM

5 MS. FEINSTEIN: Yes, Your Honor.

6 Okay. So this is the Jordan B. Peterson
7 podcast -- and that's P-E-T-E-R-S-O-N -- interview of Dr. Haim.

8 THE COURT: Is that was Dr. Jordan B. Peterson?

9 MS. FEINSTEIN: Uh-huh.

02:15PM

10 THE COURT: A podcast.

11 MS. FEINSTEIN: Yes.

12 THE COURT: And that's June 2020 --

13 MS. FEINSTEIN: June 27th.

14 THE COURT: 27th, 2024?

02:15PM

15 MS. FEINSTEIN: Correct.

16 And this is just an excerpt. It's a long video. We're
17 not --

18 THE COURT: It says 51 minutes.

02:15PM

19 MS. FEINSTEIN: Yeah, it's a long video, and we're not
20 going to be playing that. We're playing like a 30-second clip.
21 To the extent the Court wants the whole video to review it,
22 we're happy to submit that.

23 Go ahead.

24 (Video was played.)

02:16PM

25 THE COURT: I can see it for sure, but I don't have it

1 on my screen. All right. Get the sound straight. All right.
2 If you want to start it again.

3 (Video was played.)

4 MS. FEINSTEIN: So that's the quote that we included in
02:17PM 5 our reply, Your Honor. We think that is an example of
6 extremely inflammatory language. Now, this interview was
7 months ago. It was in June, okay. So farther away from trial,
8 and we kind of -- we've highlighted a few things from back
9 then, a few statements from back then, just to point out that
02:17PM 10 this has been a slow drum beat building in intensity for months
11 now, not that this is a momentary thing that the defendant is
12 going to stop doing.

13 Okay. So let's move along. Let's go to
14 Exhibit C, Page 2. Exhibit C. So that's 129-1. Yes.

02:18PM 15 And just for the record, this is, I think, Docket
16 Number 129-1.

17 THE COURT: 129-1?

18 MS. FEINSTEIN: Yes, Your Honor.

19 THE COURT: All right. Go on.

02:18PM 20 MS. FEINSTEIN: Okay. So if we can go to Page 2. All
21 right.

22 This is a statement on X, posting on X made by
23 the defendant. The date of posting was June 6, 2024. And the
24 thing I wanted to highlight is that he basically says they
02:18PM 25 wanted to intimidate me into silence using every --

1 THE COURT: Slow down.

2 MS. FEINSTEIN: Of course.

3 THE COURT: People will tend to speed up when they
4 read. Okay.

02:18PM 5 MS. FEINSTEIN: Yes. You're right. I'll be very slow.

6 "They wanted to intimidate me into silence using
7 every technique the federal leviathan had at their disposal."

8 So this is -- you'll see this sort of same theme
9 coming back, that we're trying to intimidate the defendant,
02:19PM 10 we're trying to basically scare him into silence and scare away
11 all future whistle-blowers. We think this is inflammatory.
12 This is the kind of speech that would never be allowed in front
13 of a jury.

14 Okay. We're going to move on to Page 4, same
02:19PM 15 exhibit. Okay. Speaking -- so this is, again, the defendant
16 posting on X. It's from June 12th, 2024.

17 He reposts, I guess, a news article about his
18 case, and then he says -- which is fine, and then he says:
19 "HHS has become antiscience, and the DOJ has anti-justice.
02:19PM 20 They will run cover for those who harm children and target
21 those who tell the truth."

22 For the same reason, we think this is
23 problematic.

24 Moving on to Page 12, same exhibit. Okay.

02:20PM 25 Page 12. This is a post from October 22nd, 2024. So that was

1 a little over a month ago, Your Honor. And this is actually a
2 quote, I think taken from his lawyer, Marcella Burke, that the
3 defendant was then quoting.

4 So he says in here: "She just released the
5 following statement. We have dismantled the U.S.
6 Department" --

7 THE COURT: Hold it. You're looking at the center?

8 MS. FEINSTEIN: Yeah, I'm looking at the middle
9 paragraph, Your Honor.

10 THE COURT: Paragraph.

11 MS. FEINSTEIN: Yeah.

12 She just released the following statement: "We
13 have dismantled the U.S. Department of Justice's case once and
14 soon to be twice. They've had to rescind their initial
15 indictment after having to admit its allegations were
16 completely false."

17 I want to pause there because I think the problem
18 that we have with this, Your Honor, and the reason we think
19 it's inflammatory and prejudicial is that it is basically a
20 mischaracterization of what has happened in this case.

21 THE COURT: By the way, if it's easier just for this
22 portion, you can sit down.

23 MS. FEINSTEIN: Thank you. I appreciate that.

24 THE COURT: But pull the microphone down. All right.

25 MS. FEINSTEIN: We think this is a mischaracterization

1 of what has happened in this case, Your Honor. The initial
2 indictment, there's been no finding by the Court that the
3 initial indictment was completely false. I mean, that's just a
4 complete mischaracterization of what has happened in this case;
02:21PM 5 and this is defense counsel who is an officer of the Court
6 saying this less than a month from trial. She's not quoting
7 from the record. She's not doing anything like that. She's
8 just making a statement.

9 THE COURT: What's the date on that?

02:21PM 10 MS. FEINSTEIN: It's October 22nd, 2024. I think at
11 the time we still had a December 2nd trial date.

12 THE COURT: Yes, correct.

13 MS. FEINSTEIN: Okay. Moving along. Page 16, same
14 exhibit. This is the defendant. The date of this statement on
02:22PM 15 X is November 20th, 2024. He says: "The DOJ" -- this is the
16 center paragraph. "DOJ is inventing criminal law to codify the
17 prosecution of whistle-blowers at the behest of major hospital
18 systems they expose."

19 Again, Your Honor, this is just false. We
02:22PM 20 acknowledge an unfortunate typo in the prior indictments. But
21 in no way, shape or form were we inventing criminal law, which
22 would be extremely outrageous.

23 All right. Moving along. Page 17, same exhibit.
24 This is a long post by the defendant on X on
02:23PM 25 November 24th, 2024.

1 THE COURT: November 24th?

2 MS. FEINSTEIN: Yeah. So that was last week, I think,
3 Your Honor. I've lost track of time.

4 THE COURT: Go on.

02:23PM

5 MS. FEINSTEIN: So the defendant -- and I'm just going
6 to point out parts of this, Your Honor. He's talking about our
7 motion for a gag order.

8 THE COURT: Where are you looking at?

02:23PM

9 MS. FEINSTEIN: At the very top. "DOJ's justification
10 for a gag order is that they are concerned with online
11 bullying."

02:23PM

12 He then says: "This perfectly encapsulates the
13 defining feature of modern-day woke aristocrat. They zealously
14 deploy the threat or the outright use of state-sanctioned
15 violence against those who challenge their political ideology
16 yet cast themselves as the victim when regular citizens stand
17 up, take notice, and utilize their First Amendment right to
18 criticize their tyrannical behavior."

02:24PM

19 Again, Your Honor, this language is inflammatory
20 and prejudicial.

21 THE COURT: Well, keep going. I'm just reading it now.

22 MS. FEINSTEIN: If Your Honor would like me to pause at
23 any point --

02:24PM

24 THE COURT: Hold it. They're talking about prosecutors
25 now.

1 MS. FEINSTEIN: Yeah. Do you want me to keep reading?
2 I can keep reading.

3 THE COURT: Go on.

02:24PM

4 MS. FEINSTEIN: "These prosecutors have no qualms about
5 sending me to prison for a decade. They have no problem
6 inventing new crimes to do so. They had no problem sending
7 heavily armed U.S. Marshals to my home at 7:00 A.M., even
8 though I am a law-abiding citizen with no criminal history."

02:24PM

9 THE COURT: All right. I just wanted to -- I'm reading
10 it myself.

11 MS. FEINSTEIN: Going on. I mean, I'll just pull --

12 THE COURT: Hold it. I've got notes and I can look at
13 them independently.

02:24PM

14 MS. FEINSTEIN: Yes. And I would just point out, I
15 mean, this point about sending heavily armed U.S. Marshals,
16 that is routine in every arrest, Your Honor. The defendant, we
17 understand, has a firearm or had one, and it would be
18 dereliction of duty to send our Marshals in in that
19 circumstance if they were not armed.

02:24PM

20 All right. Page 19. Okay. So these,
21 Your Honor, I want to make sure the Court understands what
22 these are. This is a re-post. So in other words, I think the
23 date on this might be on the next page. If you could go to the
24 next page and just scroll down.

02:25PM

25 The date is the November 24th again, and the

1 defendant -- if you could scroll up again.

2 THE COURT: Yeah. Explain that.

3 MS. FEINSTEIN: Yeah. So what happens on Twitter is,
4 in addition to writing your own statements that get posted --
02:25PM 5 and I'm sorry, I keep calling it Twitter. I'm a few years
6 behind on this. It's X now.

7 What happens on X is the defendant can write
8 statements and post them, or anybody can, or you can also
9 re-post what other people say, right. So if somebody else
02:25PM 10 makes a post, you can then re-post it, and it shows up on your
11 feed.

12 And this is essentially an adoption of that
13 speech by the defendant. He's chosen to highlight it and
14 elevate it and put it on his Twitter -- his X feed. And this
02:26PM 15 individual that he's re-posting, who goes by the name of, you
16 know, @kyleseraphin is saying -- I mean, the language is just
17 inflammatory. "The number of effeminate clowns at DOJ who
18 blatantly engage in bad faith legal work is stunning. It is my
19 life's mission to professionally skewer and embarrass these
02:26PM 20 absolute stooges."

21 It speaks for itself, I think.

22 THE COURT: Whose statement was that?

23 MS. FEINSTEIN: That right there is the statement of
24 Kyle Seraphin that defendant has then re-posted, and you can
02:26PM 25 see he --

1 THE COURT: Posted on what, his own --

2 MS. FEINSTEIN: On his own. So you can see up at the
3 very top -- it's a little hard to see -- it says @eithan -- it
4 says -- there's a little arrow symbol that says "Eithan Haim,
5 MD re-posted."

02:26PM

6 THE COURT: Okay.

7 MS. FEINSTEIN: We can zoom in, if the Court would
8 like. Okay. There we go.

9 Okay. And then finally, Page 26.

02:27PM

10 THE COURT: Blow it up. It sure would help.

11 MS. FEINSTEIN: Same -- this is I think, the
12 same -- it's not the same day. It's November 26th. So a
13 couple days later, the defendant is re-posting this other
14 individual who goes by the handle @feelsdesperate. He says:
15 "DOJ concocted fake crimes."

02:27PM

16 And then moving along in the next paragraph:
17 "The prosecutorial team is a clown car of incompetent midwits."

18 Again, it speaks for itself. It's inflammatory
19 and prejudicial name-calling. Just a couple weeks ago or a
20 week ago.

02:27PM

21 All right. And just so the Court knows, I'm
22 going to go through the defendant's statements, and then I'll
23 focus on his defense counsel. So I'm going to go through
24 defendant first.

02:28PM

25 THE COURT: All right. Go on.

1 MS. FEINSTEIN: All right. So we're going to go to
2 Exhibit A now.

3 THE COURT: A?

4 MS. FEINSTEIN: Exhibit A, which is Docket Number 107.

02:28PM

5 All right. Page 3. Okay. So this is a post
6 that the defendant made on X on October 26th. And he
7 says -- he's basically quoting from a letter that his lawyers
8 wrote to various senators.

9 THE COURT: Say this again.

02:28PM

10 MS. FEINSTEIN: Yeah. I believe what he's doing here
11 is he's highlighted the sort of upper box there.

12 THE COURT: This is from the defendant?

13 MS. FEINSTEIN: Yeah, this is a letter that his
14 lawyers, as I understand it, wrote to senators. So it's not a
15 member -- this is not in the record of the case.

02:29PM

16 THE COURT: Oh. Then he posted it.

17 MS. FEINSTEIN: Then he posted it, yeah.

18 THE COURT: All right.

19 MS. FEINSTEIN: And, again, he says in the second
20 paragraph --

02:29PM

21 THE COURT: So it's on the Internet.

22 MS. FEINSTEIN: It's on the Internet.

23 He posted it, "This first indictment collapsed
24 last month after it was revealed" --

02:29PM

25 THE COURT: Slow down.

1 MS. FEINSTEIN: "This first indictment collapsed last
2 month after it was revealed to be based on egregiously false
3 information."

4 Again, that is a mischaracterization of this case
02:29PM 5 and of the record here.

6 THE COURT: Now, where are we finding that? In that
7 upper square?

8 MS. FEINSTEIN: Yeah.

9 Can we zoom in on the upper square?

02:29PM 10 THE COURT: Please.

11 MS. FEINSTEIN: That's the wrong page. It's Page 3.

12 THE COURT: So who is it sent by? Which lawyer?

13 MS. FEINSTEIN: I can't quite recall, Your Honor, I'm
14 sorry, sitting here today; but it's someone at the table over
02:30PM 15 there. I believe it was Mark Lytle, but I don't remember.

16 THE COURT: All right.

17 MS. FEINSTEIN: Okay. All right. And then this is --
18 let's go to Page 8, same exhibit.

19 Okay. "Again, the DOJ's first indictment was
02:30PM 20 exposed to be entirely based on fiction. Instead of relying on
21 made-up facts, they relied on made-up crimes."

22 This is a post from November 20th, 2024, on X by
23 the defendant.

24 THE COURT: And there's a mention of the Court there.

02:30PM 25 MS. FEINSTEIN: Yes. What he's done here is he's

1 quoted from -- so the bottom, the white box there that you can
2 see, that's the transcript from, I believe, our motion to
3 dismiss hearing, Your Honor.

4 THE COURT: All right.

02:31PM

5 MS. FEINSTEIN: I want to be clear with the Court that
6 if the defendant was just posting a public transcript, we
7 wouldn't be here today.

8 THE COURT: Go on.

9 MS. FEINSTEIN: It's the commentary that's problematic.

02:31PM

10 Okay. So a couple of things I want to raise.
11 These are not exhibits in the record. We can mark them as such
12 and submit them today, just to show the Court how this kind of
13 works.

14 So these are two articles. If we can draw up
15 just the news article, Judith.

02:31PM

16 I'll explain what this is once we get it on the
17 screen, Your Honor.

18 Okay. So this is a -- sorry. If you could
19 scroll up, Judith.

20 Thank you.

21 So this is a news article posted by this website
22 Daily Wire. Okay? The date of publication is
23 November 26, 2024. The headline is "'Not the Bee' Calls for
24 DOJ to Release Docs in Case Against Child" --

02:32PM

25 THE COURT: Slow down. The court reporter needs to get

1 it down.

2 MS. FEINSTEIN: I'm sorry, Your Honor.

3 THE COURT: I'm sure she can, but it's a lot easier to
4 follow. Go a little slower, please.

02:32PM 5 MS. FEINSTEIN: "'Not the Bee' Calls For DOJ to Release
6 Docs in Case Against Child Trans Procedure Whistleblower."

7 What I wanted to point out to court here -- and
8 we're going to have to scroll down.

9 Keep scrolling.

02:32PM 10 Keep scrolling.

11 Stop.

12 Okay. So this is Page 6. And if you could just
13 actually zoom in on that middle section.

14 MS. CARDONA: This one?

02:33PM 15 MS. FEINSTEIN: Yeah. Thank you.

16 So this news article, you know, they go and they
17 quote from the defendant's X statements; and I've already read
18 this particular X statement into the record. But this is the
19 way that these public statements get even further amplified
02:33PM 20 than just whoever happens to be following the defendant.

21 And again --

22 THE COURT: I don't follow it. What am I looking at?

23 MS. FEINSTEIN: Sure. So this is part of this news
24 article that was posted on this website Daily Wire; and in the
02:33PM 25 news article it quotes from the defendant's X post, the one

1 about woke aristocrats.

2 Now, we're not trying to gag Daily Wire or any
3 press here; but I just wanted to give an example --

4 THE COURT: So what are you showing that to me for?

02:33PM

5 MS. FEINSTEIN: So what I'm showing that to you for is
6 to get a sense of how it gets -- how the defendant's public
7 statements on X are getting reposted and amplified to an even
8 wider audience.

9 THE COURT: Okay. For that purpose I'll consider it.

02:34PM

10 MS. FEINSTEIN: Yeah, exactly. Thank you.

11 THE COURT: Because that's a limited purpose.

12 MS. FEINSTEIN: Yes.

13 THE COURT: Because we're looking for the exact
14 statements of the defendant and in one or more cases the
15 attorney.

02:34PM

16 MS. FEINSTEIN: Yes, Your Honor.

17 THE COURT: All right. Go on.

18 MS. FEINSTEIN: And, I mean, there's another example
19 just like this I can do but --

02:34PM

20 THE COURT: I'm familiar enough to know that a lot of
21 these things are just disseminated across the Internet.

22 MS. FEINSTEIN: All right. Then I'm not going to take
23 the Court's time with it.

24 THE COURT: If it's a major point, a major one or two
25 more, that's fine. Okay?

02:34PM

1 MS. FEINSTEIN: Yes, thank you.

2 THE COURT: And we're honing in just on what they said.

3 MS. FEINSTEIN: Sure. The last thing I want from the
4 defendant's posts is just to let the Court know that he's
02:34PM 5 continued to post all the way up until I think yesterday and
6 today.

7 THE COURT: Post what?

8 MS. FEINSTEIN: On X. And one of the things he
9 posted -- can we draw up the picture of --

02:34PM 10 THE COURT: I don't want you skipping around --

11 MS. FEINSTEIN: I'm not.

12 THE COURT: -- just because of what I said. I mean,
13 but I need the major stuff.

14 MS. FEINSTEIN: Yes, Your Honor.

02:35PM 15 So can we post the picture of the FBI agent?

16 Okay. This is a post that the defendant made
17 again on X. I believe the date on the post was December 1. So
18 that was -- it might have been --

19 Do you know the dates?

02:35PM 20 MS. CARDONA: December 2nd.

21 MS. FEINSTEIN: December 2nd. So that was yesterday,
22 Your Honor.

23 THE COURT: Wait a second. Say that again.

24 MS. FEINSTEIN: This post was made on X by the
02:35PM 25 defendant yesterday.

1 THE COURT: Yesterday?

2 MS. FEINSTEIN: Yesterday.

3 THE COURT: Knowing that the hearing was coming today?

4 MS. FEINSTEIN: Yes, Your Honor.

02:35PM 5 THE COURT: All right. Go on.

6 MS. FEINSTEIN: And what he wrote is "The guy in the
7 red shirt is Paul Nixon. He was the FBI agent who was
8 responsible for the intrepid fact-finding mission in my
9 prosecution -- the same one where they 'missed' all of the
10 basic facts and instead pieced together a complete fiction."

11 And then he posts -- he reposts an image taken
12 from another user that appears to show FBI Agent Paul Nixon
13 when he went to interview a witness.

14 We find this really troubling and scary for those
02:36PM 15 of us involved here, in particular for the FBI agent who has to
16 continue going out and doing his job.

17 THE COURT: Are they posting any pictures of the
18 attorneys for the government?

19 MS. FEINSTEIN: There has been a picture posted -- none
02:36PM 20 of us at this table, Your Honor.

21 THE COURT: What, a former attorney?

22 MS. FEINSTEIN: Yes, Ms. Ansari. And I'll get there.

23 THE COURT: They actually have a picture of that?

24 MS. FEINSTEIN: Yes. And I'll get there.

02:36PM 25 THE COURT: Go on.

1 MS. FEINSTEIN: Okay. And I just want the Court to
2 know also -- and I think we said it's in our reply brief -- you
3 know, we're not accusing anyone at the defense counsel table of
4 trying to threaten -- you know, cause threats or incite
5 violence or anything.

02:36PM

6 THE COURT: Why not? I mean, isn't that part of it?
7 It could be part of it or not?

8 MS. FEINSTEIN: I think the --

9 THE COURT: Hold it. I'm having trouble now focusing
10 in on it.

02:37PM

11 All right. Now, explain what you just said,
12 please.

13 MS. FEINSTEIN: Sure. I guess what I would say is when
14 you repost this, there is a chance that somebody following this
15 then goes and targets this FBI agent.

02:37PM

16 THE COURT: All right.

17 MS. FEINSTEIN: Particularly because the subject matter
18 of all of this, as the Court knows, is impassioned; and, you
19 know, there are hundreds of thousands of people on X and on the
20 Internet potentially viewing these things.

02:37PM

21 All right. I'm going to move along to the posts
22 of --

23 THE COURT: Let me ask you that. Is that an actionable
24 part of what you're asking for? Is that to be considered in
25 any case law or whatever relative to a gag order and the effect

02:37PM

1 thereof?

2 MS. FEINSTEIN: I don't have case law, but I do --

3 THE COURT: Well, we looked up a bunch of cases. Okay?

4 MS. FEINSTEIN: I do --

02:38PM 5 THE COURT: And we're going to get to the *Brown* case a
6 little bit later.

7 MS. FEINSTEIN: Sure. I do believe, Your Honor, that
8 safety concerns can, of course, be considered by the Court as a
9 consideration when weighing --

02:38PM 10 THE COURT: Well, does it need to be brought to the
11 Court's attention; or do we do that hunting on our own?

12 MS. FEINSTEIN: We, of course, can bring that to the
13 Court's -- we should be bringing that to the Court's attention.

14 THE COURT: All right. Go on.

02:38PM 15 MS. FEINSTEIN: Yes. Okay. Moving on to Exhibit B,
16 these are the quotes --

17 THE COURT: Exhibit B.

18 MS. FEINSTEIN: Exhibit B which is Docket Number 108.

19 THE COURT: Always refer to that, please.

02:38PM 20 MS. FEINSTEIN: Yes, Your Honor.

21 Okay. So Docket Number 108 are the Twitter posts -- or
22 X posts -- excuse me -- of Ms. Burke who is one of the
23 defendant's counsel. I'm going to run through a few of these,
24 and then I just want to say a further word about it.

02:38PM 25 THE COURT: What are they, when we get down there?

1 MS. FEINSTEIN: I'm sorry, Your Honor. I didn't hear
2 the question.

3 THE COURT: What are they?

4 MS. FEINSTEIN: My further comments?

02:39PM 5 THE COURT: Yeah. In other words, what are we looking
6 at aside from Exhibit B?

7 MS. FEINSTEIN: Sure. So these are the posts made by
8 Marcella Burke on X.

9 THE COURT: As the attorney in the case.

02:39PM 10 MS. FEINSTEIN: Correct.

11 THE COURT: She did that herself.

12 MS. FEINSTEIN: Yes, Your Honor.

13 THE COURT: All right. Let's see them.

14 MS. FEINSTEIN: Okay. Page 3.

02:39PM 15 All right. If we could zoom in here. Thank you.

16 And, now, I do apologize. These didn't -- these
17 images didn't capture the date.

18 THE COURT: Didn't capture the date?

19 MS. FEINSTEIN: They didn't capture the date; but it
02:39PM 20 was, I believe --

21 THE COURT: Well, not believe. What was it?

22 MS. FEINSTEIN: It was November -- it was after our
23 motion to dismiss hearing, Your Honor, because that's what
24 she's discussing. Okay? Shortly after that. And I believe it
02:39PM 25 was the 19th or the 20th of November that she posted these.

1 THE COURT: All right. Go on.

2 MS. FEINSTEIN: She has since -- I should clarify.

3 THE COURT: This was posted on her own --

4 MS. FEINSTEIN: Yes.

02:40PM

5 THE COURT: -- account.

6 MS. FEINSTEIN: And she has since taken that account
7 down, which is why we couldn't go back and look for the date
8 again.

9 THE COURT: All right. Go on. She's taken it down?

02:40PM

10 MS. FEINSTEIN: Yes.

11 THE COURT: All right. Go on.

12 MS. FEINSTEIN: Okay. So it is Page 3. All right.

13 So --

14 THE COURT: Just read it.

02:40PM

15 MS. FEINSTEIN: Sure. So she's discussing the fact
16 that Ms. Ansari was unlicensed, as the Court is aware, for part
17 of this.

18 THE COURT: "Typical of the bungling, illicit,
19 twitching pile of catastrophe that this is."

02:40PM

20 MS. FEINSTEIN: Yes, Your Honor.

21 THE COURT: What is this?

22 MS. FEINSTEIN: Yes. So that's what she --

23 THE COURT: Referring to what? This case?

02:40PM

24 MS. FEINSTEIN: Referring to case and referring to the
25 government.

1 THE COURT: Okay. Go on.

2 MS. FEINSTEIN: Moving on to Page 5. If you could zoom
3 in again. Thank you.

4 She says: "The superseding indictment is riddled
5 with nonexistent statutes alleging crimes that don't exist."

6 Again, that is a mischaracterization of the
7 record in this case.

8 THE COURT: That's an attorney of record?

9 MS. FEINSTEIN: Correct. Page 6.

10 THE COURT: All right. Go on.

11 MS. FEINSTEIN: Page 6. She says -- if you could zoom
12 in on the top -- "Prosecutors try to manufacturer a new crime
13 by adding the word 'use' to the charges."

14 Page 9.

15 THE COURT: Hold it a second.

16 MS. FEINSTEIN: Of course. Do you want us to go back?

17 THE COURT: Hold it. All right. I thought I saw
18 something about the judge in this matter.

19 MS. FEINSTEIN: I'm sorry. If you could go back to
20 page --

21 THE COURT: There was something in there. There was a
22 mention in there and now I can't find it.

23 MS. FEINSTEIN: Yeah, it's right there.

24 THE COURT: Where?

25 MS. FEINSTEIN: Oh, sorry. Yeah. Zoom in at the top,

1 please. So this is, again, Page 6.

2 THE COURT: No, there was something below that.

3 MS. FEINSTEIN: Okay. Go down to the bottom.

4 THE COURT: There it is. Hang on. Just leave it.

02:42PM 5 Keep going. It sounded like "were fair," and it
6 just ended there?

7 MS. FEINSTEIN: It did not. You can see it says "show
8 more." I'm not sure if this screen capture grabbed that or
9 not.

02:42PM 10 If we go to the next page, maybe it did. No, I
11 think unfortunately that got cut off.

12 THE COURT: Go on.

13 MS. FEINSTEIN: Okay. So Page 6. Okay. We already
14 did that.

02:43PM 15 Sorry. Page 9.

16 THE COURT: Let's keep going, and then enlarge it if
17 you can.

18 MS. FEINSTEIN: Yes. Okay. So, "The government,
19 again, tried to strike problematic language mid-case instead of
02:43PM 20 filing a third corrected version, and like a child hiding
21 something broken from her parent pretending there's nothing to
22 see, the Court denied the motion to strike."

23 I think the language we're objecting there to is
24 the description of the prosecutor is "like a child hiding
02:43PM 25 something broken from her parent."

1 Okay. And then at the bottom of Page 9. All
2 right. She writes at the very bottom here, Your Honor: "The
3 government targets the defendant for purely political
4 purposes" --

02:43PM

5 THE COURT: Where is it?

6 MS. FEINSTEIN: Very bottom.

7 THE COURT: Oh, okay.

8 MS. FEINSTEIN: So like the last three lines.

02:44PM

9 "This case is pure retaliation poorly disguised as
10 prosecution."

11 I can keep going, Your Honor. I'd like to -- why don't
12 we move to Page 12. Okay. If we can zoom in at the top.
13 Okay.

14 THE COURT: And that's the prosecutor, isn't it?

02:44PM

15 MS. FEINSTEIN: Yes. So that is Ms. Ansari, the former
16 lead prosecutor in this case. This is a re-post.

17 So you can see at the top it says "Marcella Burke
18 re-posted."

19 And then this post by this other X --

02:44PM

20 THE COURT: Who's -- what is it?

21 MS. FEINSTEIN: Coastal Country Club. I don't know.
22 It's another user of X. They summarize --

23 THE COURT: Oh, but it came from Ms. Burke.

24 MS. FEINSTEIN: Yes. Exactly.

02:44PM

25 THE COURT: They took it from one of her filings, one

1 of her postings.

2 MS. FEINSTEIN: I'm not sure, Your Honor. What I know
3 is that she re-posted this person and they were summarizing the
4 case in various ways, which we can show.

02:45PM

5 But you can see the re-post was of a photograph
6 of Ms. Ansari.

02:45PM

7 If you go to the next page, this is the sort of
8 text that was above the image, I believe. And among other
9 things it says, you know, Numeral 2: "The DOJ attorney is
10 making up law and statutes in its filings."

11 Paragraph 4: "The DOJ attorney apparently
12 discovering evidence only 30 days before scheduled trial."

13 A mischaracterization of the record.

02:45PM

14 "DOJ slop-prosecutor," describing Ms. Ansari
15 towards the bottom.

16 THE COURT: Who was saying that? Is that from the
17 website?

18 MS. FEINSTEIN: It's all this user Coastal Country
19 Club --

20 THE COURT: All right. Got it.

21 MS. FEINSTEIN: As re-posted by Ms. Burke.

02:46PM

22 So, Your Honor, a couple of things. Ms. Burke
23 has since taken this down. We do know that she is now or
24 somebody from her law firm, Burke Law Group, has been posting
25 on their separate Twitter feed.

1 THE COURT: How many people are in that firm?

2 MS. FEINSTEIN: I don't know, Your Honor --

3 THE COURT: All right. Go on.

4 MS. FEINSTEIN: -- as of that day. Commentary on the
02:46PM 5 gag order and all of that. We saw that today.

6 We quoted in our filing, you know, the Texas
7 Rules of Professional Conduct. The reason why I think those
8 are relevant here, Your Honor, is that Rule 3.07 is concerned
9 with exactly the same thing that the government is at -- the
02:46PM 10 same reason the government is asking for a gag order is sort of
11 the impetus underlying Rule 3.07 and that is concerns about
12 pretrial publicity impacting the jury.

13 And if you look at those rules, we believe that
14 they have been violated by Ms. Burke. So we're not asking
02:47PM 15 anyone to -- refer anyone to the disciplinary committee; but
16 what we are saying is that, you know, it's pretty clear that it
17 was unprofessional and as an officer of the Court, she should
18 know better.

19 THE COURT: Go on.

02:47PM 20 MS. FEINSTEIN: One moment, Your Honor.

21 That's it. We're happy to answer any further
22 questions the Court has.

23 THE COURT: Not at this time.

24 Let's get the lights back on.

02:47PM 25 All right. Let's hear from the other side,

1 please. Yes, sir.

2 MR. PATRICK: Yes, sir.

3 THE COURT: Go right ahead.

4 MR. PATRICK: Is there any particular place you would
02:47PM 5 like me to start, Your Honor?

6 THE COURT: Wherever you want.

7 MR. PATRICK: Wherever I want. Thank you.

8 THE COURT: You have a number of starting places.

9 MR. PATRICK: Yes, sir.

02:47PM 10 First off, if the Court will indulge me, I have a
11 few things I'd like to lay out; and if Mr. Hall could also make
12 some of the argument, Your Honor --

13 THE COURT: No. I'm going to want the lead lawyers on
14 both sides.

02:47PM 15 MR. PATRICK: Yes, sir.

16 Dr. Haim's right to complain about his treatment in
17 this case, the way he views it, is a constitutionally protected
18 right, under the First, and as sort of the sidecar, the Sixth
19 Amendment.

02:48PM 20 There's nowhere in the Constitution, unless it's
21 in the back with the index and the maps, there's nothing that
22 says the government is entitled to a fair trial. It's the
23 defendant, that's Dr. Haim, and he has a First Amendment right
24 to not only petition his government, which he has done --

02:48PM 25 before I was involved in this case, there were letters sent to

1 Congress. Congressmen and senators have been interested in
2 this case, have sent queries to DOJ about this case, how it was
3 handled.

4 That is a fundamental precept of the First
02:48PM 5 Amendment, in addition to his ability to speak freely and also
6 speak to the press; and the press has a right to report on the
7 matters of government, and also, Dr. Haim can speak to them.

8 At its core, these are constitutional rights that
9 Dr. Haim has. Now, more specifically, though, in a granular
02:49PM 10 way, Twitter, or as its called now, X -- I'll probably call it
11 Twitter out of habit. Twitter is a massive, large social media
12 platform, but any search will tell you that only about
13 19 percent of Americans use Twitter.

14 Of the posts that the government showed here on
02:49PM 15 the screen, at the bottom, it will tell you -- there's a little
16 like -- looks like a bar graph. Some of them it was clipped
17 off. The ones that I saw, I wrote down. It tells you how many
18 eyeballs saw that. How many people on their phones went by it
19 quickly, took time to read it. They were 9,000 views; 36,000
02:49PM 20 views; 23,000 views. That's worldwide. Assume most of those
21 are going to be in the United States, but we're talking about
22 potentially impacting -- the government is saying they could
23 impact a veneer in a 13-county Houston Division. The whole
24 Southern District of Texas has about 10 million people. I'd
02:50PM 25 say the Houston Division probably has about 6 million people in

1 it.

2 This is something that, as we say in our brief,
3 searching voir dire, which as the case law speaks to voir dire,
4 instructions to the jury, those are things that can ferret out
02:50PM 5 these issues, if anybody who is even called for jury duty in
6 this case has heard anything about them, and that's
7 long-standing Fifth Circuit case law. There's Supreme Court
8 case law on this issue.

9 THE COURT: On what?

02:50PM 10 MR. PATRICK: Pardon?

11 THE COURT: On what issue?

12 MR. PATRICK: On the issue of what are the questions
13 you as the trial court judge need to answer on three key
14 components. And the *Brown* case is the most instructive here,
02:50PM 15 and you've already referenced to it, Your Honor. And really,
16 you can boil it down to three things: To gag the trial
17 participants, you must -- there must be a showing of a
18 substantial likelihood that extrajudicial commentary will
19 undermine a fair trial. This is Dr. Haim speaking about his
02:50PM 20 own trial.

21 THE COURT: Well, don't some of these have a million
22 people who have downloaded it and looked at it?

23 MR. PATRICK: There's no evidence in the record the
24 government can show that's happened. What is in the record at
02:51PM 25 the bottom of most of those posts they show --

1 THE COURT: Yeah, I understand.

2 MR. PATRICK: -- it shows how many people have
3 commented, how many people have re-posted it to their --

4 THE COURT: How about just scanned it?

02:51PM 5 MR. PATRICK: At most. I wrote these down, Your Honor.
6 The first one they showed, 126,000 views. This is worldwide.

7 THE COURT: Okay.

8 MR. PATRICK: The next one was 9,000, 9.4. The next
9 one was 36,000. The fourth one was 41,000.

02:51PM 10 So are those a lot in there of themselves? Sure.
11 But then you're talking about -- well, we have no idea how many
12 people in Houston --

13 THE COURT: What about the propensity? And we'll get
14 to the *Brown* case later. I have one question there.

02:51PM 15 MR. PATRICK: Yes, sir.

16 THE COURT: Just of doing it in the first instance.
17 Why not try it just here in the courtroom?

18 MR. PATRICK: Certainly. I'm not going to argue
19 whether or not the defendant should be posting like this.

02:52PM 20 THE COURT: Or one of your associate lawyers.

21 MR. PATRICK: Well, when we get to that, respectfully,
22 I'd love for Mr. Hall to take that, but I can't get into --

23 THE COURT: No, sir.

24 MR. PATRICK: Yes, sir.

02:52PM 25 THE COURT: You're the lead.

1 MR. PATRICK: Yes, sir.

2 With Dr. Haim, without conceding anything, like
3 every defendant, he has the right to remain silent, doesn't
4 mean he has the ability, right?

02:52PM

5 THE COURT: True.

6 MR. PATRICK: Okay. So he has the ability to complain
7 about what he views as the government's mistreatment of him.
8 He is to his core First Amendment rights petitioning his -- he
9 is claiming -- pardon me. He is complaining about what he
10 perceives as his treatment by the government.

02:52PM

11 THE COURT: Absolutely.

12 MR. PATRICK: Absolutely.

13 THE COURT: No. I agree with that's what he's trying
14 to explain.

02:52PM

15 MR. PATRICK: Yes, sir. Now, when it goes further, as
16 the government is trying to argue and the way the defense reads
17 their brief in the reply brief, it reads more of they're
18 complaining about criticism. Honestly, they're not used to
19 this.

02:53PM

20 I think Your Honor would know from your
21 experience that, well, one you have presided over many trials
22 that have had nationwide, worldwide media coverage far greater
23 than this; and those are instances where, I don't know, maybe
24 they did and my --

02:53PM

25 THE COURT: I will say this because I was going to say

1 it later. I've considered gag orders before, but I've never
2 issued one. And we'll get to that later on.

3 MR. PATRICK: Yes, sir.

4 THE COURT: In some really high-profile cases. Go on.

02:53PM

5 MR. PATRICK: Yes, sir. There is very scant case law
6 of successful gag orders in the Fifth Circuit or even in Texas
7 state court. There are some. There are some.

8 THE COURT: Well, you know, I have -- I'm going to show
9 you right here. I have a yellow sticker.

02:53PM

10 MR. PATRICK: Yes, sir.

11 THE COURT: I'm going to read it to you right now: How
12 does the defendant reconcile this, the *Brown* case?

13 Because the *Brown* case was a case here on our
14 Fifth Circuit that went up to the U.S. Supreme Court.

02:54PM

15 MR. PATRICK: Yes, sir.

16 THE COURT: Now, let me just read it because I was
17 going to get to this. I'll get to that question right now.

18 As the Fifth Circuit concluded in affirming the
19 gag order on the defendant and his attorneys in *Brown*,
20 extrajudicial comments on -- let's see -- or discussion of
21 evidence which might never be admitted in trial and *ex parte*
22 statements by counsel or parties giving their version of the
23 facts obviously threatened to undermine the basic tenant of the
24 outcome of a trial must be decided by impartial jurors.

02:54PM

25 And that's a quote from the Fifth Circuit's

1 opinion that went to the United States Supreme Court.

2 And there's a quote, a Fifth Circuit quote, in
3 the Supreme Court opinion that says: A district court may
4 impose an approximate -- what is it -- an appropriate gag order
02:55PM 5 on parties and/or their lawyers if it determines that
6 extrajudicial commentary by those individuals would present a
7 substantial likelihood of prejudicing the Court's ability to
8 conduct a fair trial as long as the order is also narrowly
9 tailored and least restrictive means available.

02:55PM 10 Also, I will say I've read the government's
11 submission on their proposed order which I believe tracks a
12 good part of the *Brown* case sometimes point for point.

13 So how do you distinguish that *Brown* case from
14 what we're looking at here both for your client and your
02:55PM 15 colleague on the defense side?

16 MR. PATRICK: Yes, sir. First, to distinguish the
17 facts. *Brown* was a -- the Court even summarizes that it's a
18 very unique case. Mr. Brown was the -- I don't know --
19 comptroller or controller --

02:56PM 20 THE COURT: Louisiana, wasn't he?

21 MR. PATRICK: The Louisiana statewide officeholder who
22 was caught up in an investigation with other statewide
23 officeholders, I believe including the governor; and that was
24 attracting massive media attention, front page of all the
02:56PM 25 Louisiana newspapers, lead story on the news in the evening.

1 It's a very different situation we have here.

2 And what's instructive is not *Brown* itself -- and
3 I'll come back to *Brown* and answer your questions,
4 Your Honor -- but a following case, *Marceaux*, which was ruled
02:56PM 5 on shortly after *Brown*. And *Marceaux*, in that case was a
6 police officer who was posting very analogous types of
7 information that Dr. Haim is posting; and there the Court says,
8 well, we're not -- this isn't the year 2000 anymore either,
9 that the media landscape is very different. The way for people
02:56PM 10 like the defendant to communicate is very different than it was
11 over time.

12 And in that case, where you had a defendant
13 actually hosting a website and posting bits of evidence to it,
14 and his commentary on that evidence was found not to be an
02:57PM 15 appropriate use of a gag order in that situation.

16 So it's our contention that *Marceaux* is actually
17 more instructive to the Court. *Brown* has the key tenants in
18 it; but over time as the media landscape and as -- over time,
19 the last 20 years, the media landscape has changed. The way
02:57PM 20 information is decimated has changed. And *Marceaux* is very
21 instructive both on a factual basis and also on a legal basis.

22 But going back to *Brown* -- I don't want to skip
23 your point -- that will the commentary undermine a fair trial,
24 it's our contention that it will not. This is not something
02:57PM 25 that the government has anything in evidence right now that

1 this has been widely read in this media market.

2 THE COURT: Do you need to show that, widely read?

3 MR. PATRICK: Widely read?

4 THE COURT: Do you need to show that?

02:57PM 5 MR. PATRICK: Well, I think for the gag order -- and
6 for them to say that a venire panel in the Houston Division of
7 the Southern District of Texas, what sort of actual reach and
8 penetration to the potential venire here matters --

9 THE COURT: Do they have to show that?

02:58PM 10 MR. PATRICK: I believe they do. Yes, Your Honor.

11 THE COURT: All right. We need to address that later,
12 please.

13 Go right ahead.

14 MR. PATRICK: And the reason that's important is, as
02:58PM 15 the case law lays out, as Your Honor knows, one of the remedies
16 would be a change of venue, a change of division even within a
17 district. Well, if their contention is that social media is so
18 pervasive -- and I would argue that the numbers of people who
19 have actually seen these posts in the greater scheme of
02:58PM 20 things -- their argument there is, I guess, never anywhere in
21 the United States could Dr. Haim have a venire sit for him
22 because of the nationwide reach of 20,000 people seeing one of
23 these posts. So there's just an illogical conclusion to their
24 argument there.

02:58PM 25 Now, Number 2 underground --

1 THE COURT: So, in other words, we need to take modern
2 technology into consideration?

3 MR. PATRICK: Yes, Your Honor. And I believe *Marceaux*
4 begins to do that.

02:58PM 5 THE COURT: All right.

6 MR. PATRICK: Further, that the order is narrowly
7 tailored. There's a bunch of ways to do that. I'm not going
8 to just go through what their cases say on that. You already
9 know that.

02:59PM 10 THE COURT: Let me ask you this.

11 MR. PATRICK: Yes, sir.

12 THE COURT: You see the narrow tailoring of the
13 government. Is anything about that acceptable?

14 MR. PATRICK: In this situation, no, Your Honor. I
02:59PM 15 wholly disagree with the government.

16 THE COURT: Go right ahead.

17 MR. PATRICK: And at the least restrictive means
18 available.

19 Again, least restrictive means -- we're going
02:59PM 20 back to some case law that did not anticipate where we are in
21 the media and social media landscape we have now; but, again,
22 this is where the Court opines on jury questionnaires, a
23 searching voir dire. I think that's the word that's used --
24 the phrase used over and over.

02:59PM 25 Again, this goes back to even cases that have

1 national media attention where people aren't going on social
2 media to opine about a case; but the media is camped out in
3 front of the courthouse every day, it's on the front page of
4 papers, it leads the 6:00 and 10:00 news at night. That in and
02:59PM 5 of itself does not mean you can't find a jury that actually
6 doesn't know what's going on in this case.

7 And I just thought of this. This is not in our
8 brief, but this is a very instructive fact pattern that was
9 strenuously litigated in our state courts.

03:00PM 10 And I use this as an example, Your Honor. In the
11 BP explosion in Galveston -- what was that now? 10, 15 years
12 ago? All the civil cases were stacked up like 10 plaintiffs at
13 a time. When the first bellwether went to trial, it was a hung
14 jury and the judge, Judge Criss in Galveston County, gagged the
03:00PM 15 jurors after they were dismissed to not discuss the case with
16 anybody.

17 And that went -- I know it was litigated at the
18 1st or 14th. I believe it went to the State Supreme Court.
19 And using Fifth Circuit precedent, they said no, you can't even
03:00PM 20 gag jurors. Even with a half a dozen or more bellwethers
21 stacked up. And that's in a county of a half a million people,
22 and it took them hundreds of venire -- potential venire members
23 to get one jury for the first bellwether.

24 THE COURT: I'm going to ask you a question --

25 MR. PATRICK: Yes, sir.

1 THE COURT: -- here, and you may want to do some
2 research when we take a break. We checked this when we first
3 saw this Dr. Peterson thing. I think it says it has
4 1.1 million views as of January -- as of June 27th, 2024.

03:01PM

5 MR. PATRICK: I would believe that number.

6 THE COURT: Pardon me?

7 MR. PATRICK: I would believe that number.

8 THE COURT: You would believe that number.

9 MR. PATRICK: Sure.

03:01PM

10 THE COURT: Isn't that a wide circulation? That's what
11 I thought I remembered, that 1 million. So I don't understand
12 then your point.

13 MR. PATRICK: That's a million hypothetical potential
14 jurors worldwide. That's not --

03:01PM

15 THE COURT: Well, where do you get 9,000 or 36,000?

16 MR. PATRICK: It's on their exhibits. Contained in
17 their exhibits tells you how many eyeballs have seen those
18 discrete posts.

03:01PM

19 THE COURT: All right. I need the government to refer
20 to that when you get back up.

21 Okay. Go on.

22 MR. PATRICK: So on the bottom -- those numbers are in
23 their own exhibits, and you're talking about anybody who has
24 access to Twitter worldwide. That's how many eyeballs.

03:02PM

25 THE COURT: Worldwide or that program, that particular

1 program?

2 MR. PATRICK: Well, that is a web-only program,
3 Dr. Peterson.

4 THE COURT: Okay.

03:02PM

5 MR. PATRICK: It's only online. It is not over
6 broadcast TV. That's anybody in the world can see that. And
7 if you watch it twice, that counts twice. So when they pulled
8 it up, that was one more tick. If they pulled it up a second
9 time, that's one more.

03:02PM

10 So, again, this goes to we are trying -- we are
11 going to have to pick a jury in the Houston Division of the
12 Southern District of Texas.

13 THE COURT: Correct.

03:02PM

14 MR. PATRICK: Not hypothetically worldwide in the reach
15 of social media.

16 THE COURT: That's about 14 counties.

17 MR. PATRICK: I count 13. It could be 14.

18 THE COURT: 13. All right. You would know better than
19 I would.

20 MR. PATRICK: I might not.

21 THE COURT: Maybe they added one since you were
22 U.S. attorney.

23 MR. PATRICK: It's 43 districtwide. I know that.

24 THE COURT: Anyhow.

25 MR. PATRICK: Yes, sir.

1 The final issue I'll get to -- let me make sure I
2 didn't miss anything -- let me address the tweets by Ms. Burke.

3 I'm not a member of the Burke law firm. That is
4 a separate firm. I work for Haynes and Boone. That's with
03:03PM 5 Burke. So the record is clear. You asked.

6 My argument there is Ms. Burke -- and she is --
7 she was posting comments on transcripts from the trial, things
8 you said; and I'm not trying to pass the buck and say what --

9 THE COURT: Like what? It was more than just what I
03:03PM 10 said.

11 MR. PATRICK: Well, there was definitely some
12 commentary.

13 THE COURT: That's correct.

14 MR. PATRICK: Yes, sir. There was some commentary with
03:03PM 15 it, but your words and the words of Ms. Ansari are there right
16 under her comments as well.

17 THE COURT: So you're saying that excuses an attorney
18 in this kind of a case?

19 MR. PATRICK: Well, look, I will freely admit an
03:03PM 20 attorney's words and actions are different; and you're going to
21 have a different level of control over that than you do
22 Dr. Haim. I don't have a case that says otherwise. However,
23 at the same time --

24 THE COURT: Well, no, I'm going to wrap up, if we get
03:04PM 25 to a certain point, about all the things the Fifth Circuit says

1 the judge can do for violation of a gag order or the potential
2 of a gag order. We did the research on all the things that
3 potentially the judge can do, including to an attorney, a
4 licensed attorney in the state. So we'll get to that later.

03:04PM

5 MR. PATRICK: Yes, sir. Yes, sir.

6 THE COURT: Go right ahead.

7 MR. PATRICK: My point is this. Ms. Burke took those
8 down. We communicated with the government. I do want to
9 lead -- so two things in particular I do want to point out that
10 the government raised.

03:04PM

11 One is the photo of the FBI agent. That is a
12 photo that has, separate and apart from anybody at this table's
13 participation, that is a clip from a doorbell camera that has
14 been widely disseminated on the Internet. I don't know the
15 woman who posted it. I'm not involved with her in that case at
16 all. She is a -- she's someone else connected with Texas
17 Children's. But that's been widely disseminated. It's not
18 restricted at all to this case and that has the image of
19 Agent Nixon.

03:05PM

20 And when I met with the government back in June,
21 Agent Nixon was very worked up about that photo back then and
22 he did not feel it was appropriate for anyone to ever see this
23 picture anywhere. He took a pretty hard stance with that.

03:05PM

24 And I disagree with that. I mean, an FBI agent
25 should not be so sensitive as a picture of him he thinks is

03:05PM

1 dangerous. As a matter of fact, it is very easy to find where
2 Agent Nixon lives. He has very poor hygiene on hiding his
3 address and hiding where he lives, and if he was really
4 concerned about his safety, he'd clean that up. Because I know
03:05PM 5 a lot of people in law enforcement, it's hard to find them, and
6 he's very easy to find.

7 The picture of Ms. Ansari. That is a Houston
8 Chronicle, what we would call in the media, a hero shot. That
9 is her giving closing arguments in a gang murder when she was a
03:06PM 10 state prosecutor, showing how the guy killed the gang member
11 and executed him. That's a hero shot. That's when that's in
12 the paper, someone cuts it out and sticks it on your door.

13 And any Google search, any online search of
14 Ms. Ansari brings up that and many other AK -- or that was a
03:06PM 15 Hearst -- Getty image search. There are plenty of wire photos
16 out of there Ms. Ansari. She's been a prosecutor for over
17 20 years. She's prosecuted many state and federal high-profile
18 cases.

19 And when Dr. Haim was indicted, the government
03:06PM 20 issues a press release, a pre-indictment press release, and it
21 says who the prosecutor is. I know that's what it says:
22 Prosecuted by Tina Ansari.

23 So the government is playing a little bit both
24 sides of this by saying, well, we don't want any attention on
03:06PM 25 us, but they issue pre-indictment press releases all the time.

1 We did it when I was U.S. attorney. I didn't like it. That's
2 DOJ policy.

3 Well, now that the shoe is on the other foot, I
4 just don't think they like the criticism. They don't like the
03:07PM 5 bright light being shown back on them.

6 So with that, you know, we have the rest of our
7 argument submitted, Your Honor.

8 THE COURT: Okay. What I'm going to do since a member
9 of the bar is being questioned at this time, Ms. Burke, if you
03:07PM 10 decide to make some statements, you may. In other words, your
11 position, if you want to add anything to it, I'll give you that
12 opportunity. I wanted just the lead counsel, but it's a little
13 bit unique relative to the attorney. If you want to make a
14 statement or any kind of an argument, that's fine. If you
03:07PM 15 waive it, so be it.

16 MS. BURKE: Sure, Your Honor.

17 I just want to urge my respect for the Court and
18 for the process and for your decision here, but we firmly
19 believe that these Twitter posts will not prejudice a jury and
03:07PM 20 it's actually necessary to ensure --

21 THE COURT: It's necessary?

22 MS. BURKE: -- to ensure Dr. Haim's rights are
23 protected.

24 Part of our strategy is to have other government
03:08PM 25 officials involved and to raise funds for his defense team,

1 which includes numerous law firms. And we --

2 THE COURT: Yeah, there's a posting about how much
3 funds were raised. I know that. And it's online somewhere.

4 Go right ahead.

03:08PM 5 MS. BURKE: That's all, Your Honor.

6 THE COURT: All right. Let's hear from the government.

7 MS. FEINSTEIN: I'll be very brief, Your Honor.

8 THE COURT: Okay. At the close of your statement,
9 we're going to take a break, short break. I may have some more

03:08PM 10 questions or I may -- I'll go over some of the other questions

11 I have. As usual, a lot of the questions I had at the

12 beginning were already answered. I may go into that before our

13 break. We usually take a break about every hour and a half,

14 and so we've been in session now about one hour and five

03:08PM 15 minutes, so I think we're doing okay.

16 Okay. Yes, ma'am. Go right ahead.

17 MS. FEINSTEIN: All right. I just want to respond to
18 some of the things the Court wanted me to talk about.

19 THE COURT: And anything else as to what the opponent
03:09PM 20 had to say.

21 MS. FEINSTEIN: Yes. We're talking about the numbers
22 of viewing for the Peterson podcast. That's in Footnote 2 to
23 our reply brief.

24 As of December 1st, 2024, that post, according to

03:09PM 25 YouTube, had been viewed 1,142,987 times, so over a million

1 times.

2 That's one thing I want to show on Trial Director,
3 Your Honor, that goes to that point as well.

4 THE COURT: Okay. What is this? Where is it coming
5 from?

6 MS. FEINSTEIN: Sure. So this is a post on --

7 THE COURT: Exhibit?

8 MS. FEINSTEIN: This is not an exhibit. We can mark it
9 as an exhibit if you would like.

03:10PM 10 THE COURT: Okay.

11 MS. FEINSTEIN: So for purposes of right now, why don't
12 we call this Exhibit E.

13 THE COURT: E?

14 MS. FEINSTEIN: Yes, and we'll mark that and submit it
03:10PM 15 to the Court.

16 This is a post by an X user named Meg Brock. I'm
17 unfamiliar with who this person is, Your Honor. She re-posted
18 the defendant's post here, you can see below, and you can see
19 how many times her re-post was viewed.

03:10PM 20 THE COURT: Where do you look?

21 MS. FEINSTEIN: Okay. You look --

22 THE COURT: Bottom right?

23 MS. FEINSTEIN: I'm going to walk up here if that's
24 okay.

03:10PM 25 THE COURT: Where?

1 MS. FEINSTEIN: Right here at the bottom, 690K.

2 THE COURT: Yeah. 690,000?

3 MS. FEINSTEIN: Yes. So that's just one user on
4 Twitter re-posting the defendant. So if you just look at the
03:10PM 5 number of views on the defendant's own posts, it's not going to
6 tell you how many times it's been viewed.

7 I would also just say that times have changed
8 since *Brown*, and I think defense agrees with that in terms of
9 the media landscape. The reality is that these -- it's much
03:11PM 10 easier for individual people to get a big platform than it used
11 to be, and their statements live on and have an afterlife and
12 get quoted again and again and again, as the news article that
13 we posted, for example, shows.

14 So we think that this case is actually very
03:11PM 15 similar to *Brown*. We think it is an unusual case in the amount
16 of attention that it's getting and extraordinary, and we gave
17 the Court a proposed gag order that we basically took it
18 directly from *Brown*, we added in some language for social
19 media --

03:11PM 20 THE COURT: Hold on. The language tracked *Brown* almost
21 exactly in points.

22 MS. FEINSTEIN: Yes. We included language from social
23 media about social media. That's the only thing that was not
24 in the *Brown* gag order that was in ours.

03:11PM 25 THE COURT: Right. Yeah.

1 MS. FEINSTEIN: And so for all the reasons that we've
2 said, we think a limited gag order is appropriate going
3 forward.

4 THE COURT: All right. Let me see if I have any
03:11PM 5 questions left on my sheet, because very often, they're already
6 discussed. When I come back in, we'll all talk about trial
7 dates and so forth. I can give you an approximation to see if
8 there's any absolute conflict. I may consider it, I may not.
9 But I looked at my schedule.

03:12PM 10 All right. For the government, I think you've
11 covered it. But let me ask you this: Who would the requested
12 gag order be applicable to? I think you have it in your first
13 paragraph as to who it is --

14 MS. FEINSTEIN: Yes.

03:12PM 15 THE COURT: -- in the order, if I remember. Hang on.
16 I've got a copy of it right here. Yeah. You say to the
17 defendant himself, his attorneys of record, and any agents in
18 their employ working on behalf of the defendant. All right.
19 All right. That answered that question.

03:13PM 20 All right. That's the only one I have. Let's
21 see. Give me a second. I want to look at all of these things
22 so we can move relatively quickly. And there's a lot of
23 in-house research that I want to -- on this.

24 All right. Right now, that's about what I've
03:14PM 25 got. I'm going to come back and I'm going to give you the

1 potential trial dates.

2 Do we have it listed here? We did it yesterday.
3 You've got it?

4 THE LAW CLERK: Yes, sir.

03:14PM 5 THE COURT: Oh, yeah. Okay. Hang on. Here it is.
6 Let me give you the potential that we could have a -- I'm going
7 to ask you -- I know I asked one time before. I cannot ask the
8 defense. This may affect the dates we have, all right? This
9 is one follow-up that I'll talk about when we get back with our
03:14PM 10 calendar.

11 How much time does the government anticipate for
12 its portion of the case?

13 MS. FEINSTEIN: We anticipate somewhere between three
14 to five days, Your Honor.

03:15PM 15 THE COURT: It's now longer than you initially
16 anticipated.

17 MS. FEINSTEIN: It is, Your Honor. Yes. I mean, in
18 response to arguments the defense have made, we've done
19 additional investigation, talked to additional witnesses. It's
03:15PM 20 not significantly longer.

21 THE COURT: Well, you said, what, two or three last
22 time. What --

23 MS. FEINSTEIN: I can't exactly, but that sounds right.

24 THE COURT: I think it was -- at one time, well,
03:15PM 25 two and -- but that's all right. You're estimating how many?

1 MS. FEINSTEIN: I'm being generous in our estimate so
2 we don't run into problems.

3 THE COURT: It's what?

4 MS. FEINSTEIN: Five days at the most.

03:15PM 5 THE COURT: Thank you. Does that include any
6 cross-examination?

7 MS. FEINSTEIN: No, because I just don't know how long
8 the cross-examination is going to take.

9 THE COURT: So how long is this thing going on?

03:15PM 10 MS. FEINSTEIN: Oh, I'm sorry. I think it does. I
11 think it does.

12 THE COURT: Yeah. Wait a second.

13 MS. FEINSTEIN: Yes.

14 THE COURT: How long is it going on? All of a sudden,
03:15PM 15 it's getting longer and longer.

16 MS. FEINSTEIN: We don't think more than five days for
17 the government's case, Your Honor.

18 THE COURT: Okay.

19 All right. Let me ask the defendant, since I
03:16PM 20 can't ask -- are you calling any witnesses or certainly if your
21 defendant's taking the stand, about how much time should I set
22 aside? Because we've got to call people and then we have to
23 know if their schedule would allow it and so forth. Just
24 ballpark, that's all I need is a ballpark to make sure the
03:16PM 25 dates we have here is workable now on our calendar.

1 You want to visit with your co-counsel?

2 MR. PATRICK: Can I have a moment, Your Honor?

3 THE COURT: Yeah. Hang on one second.

4 MR. PATRICK: Okay.

03:16PM 5 THE COURT: Off the record, but we're going to stand
6 right here. If you want to visit on the side, that's fine.

7 (Off-the-record discussion.)

8 THE COURT: Yes, sir.

9 MR. PATRICK: So if the defense puts on a case, a big
03:17PM 10 wild card would be if Dr. Haim testifies, I could easily see
11 three to five days by the defense as well.

12 THE COURT: Okay. Thanks.

13 All right. It's now 3:18. We're going to take a
14 little bit longer break because I need to do maybe some
03:17PM 15 research and just tailor it based upon the alternatives that I
16 thought about beforehand.

17 So it's now about 3:20. We'll be back in session
18 at 3:45. All right. So we'll see you then.

19 THE LAW CLERK: All rise.

03:17PM 20 (Court is in recess.)

21 THE LAW CLERK: All rise.

22 THE COURT: Thank you. Be seated.

23 One preliminary question, now that Ms. Feinstein
24 is the lead counsel for the government.

03:49PM 25 How many first-chair federal jury trials have you

1 had?

2 MS. FEINSTEIN: In front of a jury, Your Honor? I
3 believe five.

4 THE COURT: Okay. Federal first-chair?

03:49PM 5 MS. FEINSTEIN: Yes.

6 THE COURT: Okay. Thank you. That's one of the
7 statistics I did not have.

8 All right. First, we're going to get to the
9 trial scheduling order, okay? All right. The scheduling for
03:50PM 10 this trial is as follows: The date for the final pretrial
11 conference is Thursday, February 6th. I'm saving the 7th if
12 there's a holdover necessary. If you think you can do it all
13 in one day, let me know, and we'll just make it one day, but
14 right now, I'm putting two of those out.

03:50PM 15 The jury call will be February 10th at 10:30 A.M.
16 And, again, I think I had a note for the lawyers. If -- more
17 than likely, I am not going to go with a jury questionnaire,
18 but I will consider it.

19 And as far as the voir dire, I'll probably be
03:51PM 20 doing it, okay. But I will consider the jury questionnaire,
21 and if I decide not to, at least it will give me the
22 opportunity to ask some of the questions you think ought to be
23 asked.

24 So we had a date, I think, for the last one,
03:51PM 25 didn't we? It was due, what, a couple of weeks ahead of time?

1 MR. PATRICK: It was. I think that due date was -- I
2 don't remember what it was. It was early November.

3 THE COURT: All right. We'll set a date on that one,
4 okay, but I will consider it. And then the -- because the jury
03:51PM 5 section also has to -- also, keep in mind, if you would -- and
6 it's been this way for a number of years -- we are not in
7 sessions on Wednesday, trial sessions. And February 17th is
8 Presidents' Day, so it's a federal holiday. So if you would
9 keep that in mind.

03:51PM 10 All right. The first thing I'm going to mention
11 is the following. Nobody take it personally. It's just the
12 order of the Court.

13 The research we did, which was intensive, getting
14 ready for this today -- and so was yours, for that matter; so,
03:52PM 15 I appreciate it -- is the penalties the Court can impose after
16 a gag order violation, penalties -- and, again, pardon me for
17 reading because I had some of this typed out with the two
18 alternatives and I fine-tuned it in there and had it typed up.
19 So I usually don't read, even giving, you know, major
03:52PM 20 addresses; but it's the safest thing here where it all gets
21 taken down.

22 All right. Penalties the Court can impose after
23 a gag order violation according to the Fifth Circuit:

24 Monetary fines.

03:52PM 25 And the next one, the withdrawal of the

1 defendant's bond and jailing the defendant pending trial.

2 Holding the offending party in civil or criminal
3 contempt of a court order.

4 Written or verbal admonition by the Court.

03:53PM 5 Written order of sanctions against an attorney.

6 And I'm just stating this not as a threat,
7 because you will see where I'm going, but you -- if I ever
8 elect to do that with an attorney for either side, to put it in
9 writing, on every pleading you're going to have to file for the
10 rest of your career, assuming it's upheld if it's appealed.

11 And if it is appealable, I don't know. Okay?

12 For instance, on a *pro hac vice* motion, if
13 anybody files one in our court from out of state, it says here
14 "Has the applicant been sanctioned by any bar association or
15 court?"

03:53PM

16 You don't want that on anybody's record. And
17 we'll get to that sort of aspect in a moment.

18 And, again, I apologize for reading; but it's the
19 safest thing to do. So that's what we were doing a little bit
20 back there.

03:54PM

21 Well -- hang on.

22 (Off-the-record discussion.)

23 THE COURT: I'm trying to count how many years I've
24 been judging, state and federal, because I have it here.

03:54PM

25 Okay. During my over 40 years career as a judge

1 in both state and federal court, I have never issued a gag
2 order. I came close once during the three City Hall bribery
3 trials in the 1990s. In that case I made it clear to the
4 attorneys involved what the boundaries were laid, including for
5 their clients; and they promptly adjusted their conduct.

03:54PM

6 Some of you may remember these lawyers. These
7 were not lightweight defense lawyers. And they complied, and
8 they assisted in talking to their clients. The late
9 Mike DeGeurin, Dick DeGeurin, Mike Ramsey, Dan Cogdell, all on
10 the same case. And that's the closest I've come. And I let
11 them have it a little bit ahead of time. I told them what the
12 possibilities were, them and their clients, and they advised
13 their clients and they just didn't do any more.

03:55PM

14 So what I've decided to do -- and I'm going to
15 phrase it this way -- I will not grant or deny a gag order at
16 this time, in effect granting a continuance and deferring
17 ruling on the government's pending motion. So it remains a
18 live case, a live motion. I'm not going to rule on it.

03:55PM

19 If an additional hearing in the future is
20 necessary, if it's brought to my attention in the future, there
21 will be no repeat testimony of what was offered during today.
22 That will all be adopted -- what is it -- included by adoption,
23 and I will hear only the new matters. The Court will only
24 consider new alleged instances of improper public commentary.

03:55PM

25 And I want to be clear on this. I'm going to be

03:56PM

1 equally clear now. I'm leaving it to the attorneys, one shot,
2 like I did the last time. And you know -- arguing for either
3 the government or the defense, you know what the cases say.
4 And I know you're arguing on behalf of your client, but just
03:56PM 5 refer back to the case law.

6 And, again, pardon me for writing it; but I
7 wanted that much in the record. I'm going to be equally clear
8 now.

9 If similar conduct continues to arise in this
03:56PM 10 case after this hearing, I will not hesitate to reconsider the
11 issuing of a gag order. Should such an order become necessary,
12 any violation by attorney may result in sanctions and/or a
13 formal written order of sanctions from this Court.

14 Furthermore, any violation of this order by the
03:57PM 15 defendant himself could lead to the revocation of his bond and
16 immediate custody, sending to the federal jailhouse, the
17 Federal Detention Center.

18 Anything further from the government?

19 MS. FEINSTEIN: I just -- I want to make sure I
03:57PM 20 understand what the Court said.

21 THE COURT: Stand up, counsel.

22 MS. FEINSTEIN: I want to make sure I understand what
23 the Court just ordered.

24 THE COURT: Well, I was pretty clear.

03:57PM 25 MS. FEINSTEIN: Well, I just wanted to make sure I

1 understood.

2 Is the Court saying that you are imposing that
3 order now and that you are holding it in continuance and if the
4 order is entered, than the defendant would be --

03:57PM

5 THE COURT: Say again. No. I thought it was made
6 perfectly clear. I'm continuing this hearing without
7 prejudice, in effect.

8 MS. FEINSTEIN: Okay.

03:58PM

9 THE COURT: In other words, everything both sides have
10 put on, I will not hear again. When I reconvene, if I need to,
11 if there's any other instances that may fall within that
12 category, okay, we're not going into anything before. It's all
13 going to be new stuff, and then I'll rule on it. And ruling on
14 it, there's all of these possibilities for the lawyers and the
15 defendant.

03:58PM

16 MS. FEINSTEIN: Understood.

17 THE COURT: So I did it one time before and that
18 was -- what is it -- in the 1990s and I'm coming close here,
19 but I'm not there yet.

03:58PM

20 We've heard now -- we've heard from the
21 government, had a question.

22 How about the defense?

23 MR. PATRICK: No, Your Honor.

24 THE COURT: All right. Let's just get this tried.

03:58PM

25 Don't try it anywhere else. You'll get a hearing; and I'll

1 give you as much leash as I can, so to speak. Let's just try
2 it in the courtroom. That's what it's made for. All right?

3 And you're all federal practitioners. I
4 appreciate your effort in this case. We'll get all those
03:59PM 5 orders out in a few days.

6 Thank you so much. We'll stand adjourned.

7 MS. FEINSTEIN: Your Honor, I'm so sorry. One just
8 business matter.

9 THE COURT: Yes.

03:59PM 10 MS. FEINSTEIN: We just want to formally offer, to the
11 extent that we hadn't, the Exhibit E that we cited --

12 THE COURT: All those exhibits that I heard are now in
13 evidence for the purpose only of this hearing.

14 MS. FEINSTEIN: Thank you.

03:59PM 15 THE COURT: Yes, ma'am.

16 Okay. We stand adjourned.

17 THE LAW CLERK: All rise.

18 (The proceedings were adjourned.)

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1 REPORTER'S CERTIFICATE

2 I, Lanie M. Smith, CSR, RMR, CRR, Official
3 Court Reporter, United States District Court, Southern District
4 of Texas, do hereby certify that the foregoing is a true and
5 correct transcript, to the best of my ability and
6 understanding, from the record of the proceedings in the
7 above-entitled and numbered matter.

8 /s/ Lanie M. Smith
9 Official Court Reporter
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